

EXECUTIVE BRANCH ETHICS COMMISSION  
**ADVISORY OPINION 00-22**  
April 28, 2000

RE: May employee of correctional facility provide services as a ventriloquist for a Department by which he is employed, although at a different correctional facility?

DECISION: No.

This opinion is in response to your March 9, 2000, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 28, 2000, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed by the Personnel Management Branch of the Department of Corrections (the "Department"). The Department recently hired a correctional recreation leader at the Green River Correctional Complex. This employee also performs as a ventriloquist on his own time, and has performed in the past for Department correctional facilities. The Department pays for his performances from the inmate canteen fund which you state is not a state fund.

The employee recently has been asked to perform his ventriloquist act for a correctional facility. You ask, now that he is a state employee, whether he may perform at Department correctional facilities other than at the one by which he is employed, since he will be paid by canteen fund moneys.

KRS 11A.040(4) provides:

(4) No public servant shall knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement,

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lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340...

KRS 196.230(1) provides:

(1) No officer in the department shall sell anything to any institution under the control of the Department of Corrections, or make any contract in which he is interested, with the institution.

Additionally, KRS 11A.020(1)(c) and (d) provide:

(1) No public servant, by himself or through others, shall knowingly:

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Pursuant to the provisions above, an employee is prohibited from having an agreement to provide services for the state agency by which he is employed. Thus, the employee is prohibited from having an agreement with the Department to provide his services as a ventriloquist for a correctional facility. The Commission notes that the inmate canteen fund is established and maintained by the Department pursuant to KRS 196.270 which provides:

There shall be established and maintained within the Department of Corrections a centralized canteen operation which shall be incorporated and self-supporting. Each institution administered by the department and each institution which operates under a contract between the state and a private provider shall participate in the canteen operation. The directors of the canteen shall be as follows: the commissioner of the Department of Corrections, the deputy commissioner of Adult Institutions, the

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executive director of the Division of Administrative Services, and the wardens of all state and private correctional institutions. All profits from the canteen, including the sale of handicrafts made by inmates to the general public, shall be used exclusively for the benefit of the inmates of the department. The directors of the canteen may consolidate the assets of the existing state and private canteens for this purpose and to employ the staff and inmates necessary to efficiently manage the canteen. Assets and profits from the operation of private canteens shall be accounted for separately and utilized exclusively for the benefit of inmates in private prisons.

Thus, it appears that the Department is responsible for moneys in the inmate canteen fund. Although the ventriloquist will be paid with funds from the inmate canteen fund, it appears that he will still have an agreement with the Department, since Department officials hire him to provide such a service, and the Department is ultimately responsible for the fund.

The Commission cautions you to seek advice from the Finance and Administration Cabinet as to whether such inmate canteen funds for which the Department is responsible should be deposited pursuant to KRS 41.070(1).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.

[www.state.ky.us/agencies/ethics/ETHICS.HTM](http://www.state.ky.us/agencies/ethics/ETHICS.HTM)

May 1, 2000

Ms. Beth Steinle  
Personnel Management Branch  
Department of Corrections  
State Office Building  
Frankfort, Kentucky 40601

***Reference: 042800.10***

Dear Ms. Steinle:

At its April 28, 2000, meeting, the Executive Branch Ethics Commission took up your request, dated March 9, 2000, in which you ask whether an employee of a correctional facility may provide services as a ventriloquist for a Department by which he is employed, although at a different correctional facility.

The enclosed Advisory Opinion 00-22 is issued in response to your inquiry.

Sincerely,

Jill LeMaster, Executive Director

Enclosure: Advisory Opinion 00-22

